1   Podolak - 6/11/08

2   them.

3   They got paid for their regular

4   hours, time and a-half for the overtime and some

5   cash for their lunch hour.

6   That's to the best of my

7   recollection.

8   Q.   And if I understand correctly, that

9   was the method that the previous owner had used?

10   A.   The previously operator.

11   Q.   The previously operator?

12   A.   Yes.

13   Q.   And who was the previous operator?

14   A.   Jose Tavares.

15   Q.   Did you ever discuss that method of

16   payment with Mr. Tavares?

17   A.   I don't understand the question.

18   MR. BERNSTEIN: Well, let me try to

19   clarify it.

20   Q.   You described the method of payment

21   that you said you inherited from the previous

22   operator.

23   A.   Huh-huh.

24   Q.   Mr. Tavares.

25   Did you ever talk with him about that

1   Podolak - 6/11/08

2   method?

3   A.   Well, no - - well, he told me how he

4   was paying the guys and that was the extent of the

5   discussion. I didn't ask, you know - - I didn't

6   get into any questions and answers about it. That

7   I could recall.

8   Bottom line, I don't really remember

9   the conversation. But he gave me the information

10   and I went with his information.

11   Q.   How long has Bienvenido been in

12   operation?

13   A.   Approximately eight or nine years.

14   Q.   How were the payroll functions for

15   Bienvenido handled before Mr. Saperstein - -

16   MS. MEYERS: Objection.

17   Q.   Was hired?

18   MS. MEYERS: He stated he had nothing

19   to do with the payroll for Bien.

20   MR. BERNSTEIN: I understand that.

21   MS. MEYERS: You can answer, if you

22   know.

23   Q.   If you know?

24   A.   (No response).

25   MR. BERNSTEIN: Let me ask you

1   Podolak - 6/11/08

2   Q.   That week; is that right?

3   A.   Correct.

4   Q.   And who determined what amount of

5   cash each person was to get?

6   A.   Raj and myself.

7   Q.   And how did you decide that?

8   A.   I don't recall how we did this. But

9   it was certainly based on the amount of hours they

10 worked and it probably was a combination of their

11 check and cash to equal minimum pay standard for

12 regular time and time and a-half for overtime.

13   Q.   When you say "it probably was," can

14 you tell me what you base that on?

15   A.   Well, just thinking about how we did

16 things in those days, I believe that's what we did.

17   Q.   Do you recall ever discussing that

18 with Raj?

19   A.   I don't recall a specific conversa-

20 tion with Raj over that issue.

21   Q.   Do you recall anything generally

22 about what Raj might have said to you or you might

23 have said to Raj about that issue?

24   A.   Well, I may have discussed it with

25 him and I probably did the computations myself, I

1   Podolak - 6/11/08

2   would think, and maybe he had some imput on some-

3   thing.

4   But that's it.

5   Q.   Well, say for Felix, the second

6   person that's listed up at the upper left there --

7   and this is --

8   A.   Okay.

9   Q.   Is that Bienvenido?

10   A.   Yes.

11   Q.   Okay. How would you arrive at the 80

12   there?

13   What was the process?

14   A.   Probably he worked --

15   MS. MEYERS: If you recall?

16   MR. BERNSTEIN: I'm sorry.

17   MS. MEYERS: I said, if he recalls.

18   I don't want him guessing.

19   THE WITNESS: Yes.

20   A.   Other than --

21   MR. BERNSTEIN: Let me just make sure

22   that you understand.

23   Q.   Unless I say differently, all of my

24   questions are directed to your knowledge and your

25   recollection.

1   Kissoon

2   lawsuit?

3   A.   No.

4   Q.   Do you know who was involved in

5   doing that?

6   A.   I don't know.

7   MR. BERNSTEIN: Let's mark as

8   Plaintiff's Exhibit 12, a series of

9   documents that was produced by your

10   attorney. Again the Bates numbers didn't

11   print out, but it is 4294 to 4355. So

12   that is going to be Plaintiff's Exhibit

13   12.

14   (Plaintiff's Exhibit 12, Bates

15   numbers 4294 to 4355, marked for

16   identification, as of this date.)

17   A.   Can I open it?

18   Q.   Yes, sure.

19   Have you had a chance to glance at

20   Exhibit 12?

21   A.   Over it?

22   Q.   Not in detail, I know it is a lot?

23   A.   Okay.

24   Q.   My first question is, are there

25   some pages in Exhibit 12 that you prepared,

1   Kissoon

2   that you wrote?

3   A.   I wrote this.

4   Q.   You wrote all of the reports?

5   A.   All of these reports.

6   Q.   Right up on the first page there

7   up at the top it says 8/25/03 to 9/1/03, it

8   says Raj okay?

9   A.   Yes.

10   Q.   You wrote that?

11   A.   Yes.

12   Q.   What did you mean by writing Raj

13   okay?

14   A.   I just put my name on it.

15   Q.   These are the same type of reports

16   that we looked at in the previous exhibit?

17   A.   Yes.

18   Q.   You looked at the time cards to

19   get the hours for each person?

20   A.   Yes.

21   Q.   You did that at each garage?

22   A.   At each garage.

23   Q.   Then you handed the report to Sam?

24   A.   Correct.

25   Q.   And he put his numbers on there

Page 72

1   DAVID SAPERSTEIN

2   Q   Do you know on what basis he does that

3   or what basis you do it when you do it?

4   A   If an employee worked 12 hours five

5   days a week, I would basically do eight plus

6   four for every 12 hours, and it would, you

7   know -- it would kind of add up to 40 plus or

8   whatever. Forty plus 20.

9   Q   Let's look at Exhibit 12. (Handing.)

10   Quickly, are there reports in here

11   from the time when you were handling the

12   payroll?

13   A   Yes.

14   Q   Can you give me an example?

15   A   Let me back up. At this -- let's just

16   go with the first page. 8-25-03 to 9-1-03, I

17   was only handling the check portion of the

18   payroll.

19   Q   So in that instance, how did you

20   utilize the information from this report?

21   A   In this particular instance?

22   Q   Yes.

23   A   Let's take in Bien, Felix, he got on

24   his check 40 hours regular, 26 hours overtime at

25   whatever the minimum wage rate was.

1   DAVID SAPERSTEIN

2   Q   Is there an example in here of when

3   you were handling both the check and the cash

4   portion?

5   A   Let's go to the last one, since it's

6   probably the last date.

7   Q   The last one?

8   A   Let me see what that date is. We

9   can't read that date, so let's go to the one

10   before the last one.

11   Q   Okay.

12   A   I believe I was handling both portions

13   at this point.

14   Q   Okay. And in that instance, how did

15   you utilize the information that you were given?

16   A   In this particular one, Sam figured

17   out the distribution of regular and overtime

18   pays. Let's take Sammy, for instance.

19   Q   The first one?

20   A   The first one. Forty hours regular,

21   26 overtime is what his check was. And I'm

22   guessing that at some point I put cash in his

23   envelope as well.

24   Q   And what method did you use to arrive

25   at the cash amount?

Page 74

DAVID SAPERSTEIN

1
2   A   I added in six hours for lunch because
3   six days, six hours.
4   Q   And we know it's six because -- well,
5   it says six days?
6   A   It says six.
7   Q   And 72 hours?
8   A   Yeah.
9   Q   And then Sam wrote 40 plus 26?
10   A   Yes.
11   Q   Meaning the check amount was for 40
12 regular and 26 overtime hours?
13   A   Yes.
14   Q   Let's look at Exhibit 13.   (Handing.)
15   Are these pages, or most of them,
16 examples of the grid that you said you got from
17 Raj at times?
18   A   Yes.   There are also additional pages
19 in here with the hours that I would get from Raj
20 and/or Sam.   In this particular case, I did the
21 distribution of regular and overtime hours on my
22 own.
23   Q   What's the date on that?
24   MS. MEYERS: Page number?
25   THE WITNESS: Looks like 17.

1   DAVID SAPERSTEIN

2   BY MR. BERNSTEIN:

3   Q   Is there a date on the page you just

4   looked at?

5   A   1-14 to 1-20-2008, and it's the sixth

6   page.

7   Q   So Raj sometimes gave you information

8   in a grid form and sometimes in the list form

9   that we've looked at; is that right?

10   A   Currently I get them in both grid form

11   and list form.

12   Q   For the same workers or --

13   A   Yes.

14   Q   When did Raj start providing the grid

15   type format?

16   A   I believe in 2007, but I'm not sure.

17   Q   And how did it come about that he

18   started doing that? Was it his idea or somebody

19   else's to do it?

20   A   No, it was my idea.

21   Q   And what was your basis for asking him

22   to do that?

23   A   I needed to see how many hours per

24   shift the employees were working, because at

25   this time we were trying to control our

Page 76

1   DAVID SAPERSTEIN

2   overtime.

3   Q   How does the grid format show the

4   number of hours per shift that people were

5   working?

6   A   Well, let's take the first page, Bien.

7   Q   Sure.

8   A   Sammy Gerardo, Monday, eight hours.

9   Tuesday, eight hours and so on. It specifically

10   says in this particular day how many hours they

11   worked in that day.

12   Q   I see. That's a piece of information

13   that's not on the list form; is that right?

14   A   That's correct.

15   Q   How did having the information in the

16   grid help you to control overtime?

17   A   It just made it easier for me to see

18   where people were working 12 hours a day or 10

19   hours a day or eight hours a day, and it helped

20   me, you know -- it helped me advise Sam that we

21   need to cut down on overtime costs. And if it

22   means to hire an extra man to work less

23   overtime, that's what it means doing.

24   Q   Next let's look at Exhibit 14.

25   (Handing.)

1   DAVID SAPERSTEIN

2   Do you recognize that -- I'm just

3   focusing on the first page. Do you recognize

4   that document --

5   A   Yes.

6   Q   -- or type of document?

7   A   Yes.

8   Q   What is it?

9   A   It's a document that I generated to

10   figure out how much cash to give the employees.

11   Q   Can you tell me what information is in

12   the numerical columns? I see there's a list of

13   garages by the list of workers' names.

14   A   Okay.

15   Q   You have total net pay and so forth.

16   A   So total net pay is the total net

17   they're supposed to be receiving for the hours

18   worked plus the lunch hour in cash and check.

19   Total hours worked is the total hours worked

20   inclusive of the lunch hour. The net check is

21   how much the check is net for this location.

22   17.21 is the cash amount. Seventeen, it's

23   rounded off.

24   Q   Let's go back to total net pay.

25   A   Uh-huh.

1   DAVID SAPERSTEIN

2   Q   In this case this is Persio. $126.

3   Where did that number come from?

4   A   It's 24 times whatever it figures

5   out -- the amount that figures out to net.   It's

6   not a gross number.   So its got to figure out to

7   a net number.   So it's 24 -- if you divide 126

8   by 24, you'll get what it is.

9   Q   If we divide 126 by 24, we get a

10   number that's five something?

11   A   Right.

12   Q   But where does the 126 come from?

13   A   Twenty-four times whatever that number

14   is.   Twenty-four times 5.25 is 126.

15   Q   So where does the 5.25 come from?

16   A   There was the net -- that's how I

17   figured out what they were supposed to get net

18   based on --

19   Q   But how did you know to use 5.25?   It

20   may be very elementary here?

21   A   No, I understand what you're saying.

22   I'm not 100 percent sure.   This was four years

23   ago; and after I did it the first time, I never

24   did it again.   I believe we took whatever Jose

25   Tavares was paying them net, divided it by

1   DAVID SAPERSTEIN

2   whatever amount of hours they worked, inclusive

3   of the lunch hour, and that's where the number

4   came from.

5   Q   That's where the 5.25 came from?

6   A   Right. Which equates to something

7   like six something gross.

8   Q   How do you get from the net to the

9   gross?

10   A   It didn't matter. It didn't matter

11   because the employees didn't know -- they didn't

12   care about their gross. They only cared about

13   what they walked home with. For payroll

14   purposes, I'm sorry, it didn't matter.

15   Q   I understand. But you still had to

16   have a method to go from net to gross?

17   A   No. I didn't need -- I only needed a

18   method to get from gross to net. Their gross

19   was very simple. Gross was based on minimum

20   wage, hours worked.

21   Q   I see. Minimum wage and hours worked?

22   A   Minimum wage meaning 40 regular and

23   whatever 1.5 times the minimum wage rate at

24   whatever time it was. I believe 2004 was 5.15.

25   Q   Did overtime -- did the overtime rate

DAVID SAPERSTEIN

2   go into that computation?

3   A   Which computation.

4   Q   Well, when you said based on -- I

5   think you said based on hours worked and gross?

6   A   I don't know which computation you're

7   talking about. Overtime went into their gross

8   check.

9   Q   Okay.

10   A   So if they worked -- let's just take

11   an example here. In this case, Persio at Bien

12   worked 24 hours.

13   Q   And that would come from the time

14   cards?

15   A   Well, I would get it from the sheets

16   that we looked at earlier.

17   Q   Raj got it from the time cards and

18   gave it to you; is that right?

19   A   That's correct.

20   Q   24 hours?

21   A   24 hours. So some variation of 24

22   hours was regular pay and some variation -- I'm

23   sorry, this 24 hours is inclusive of the hour

24   for lunch.

25   Q   Okay.

1   DAVID SAPERSTEIN

2   A   So some variation of 22 hours went to

3   regular pay and some variation -- you know,

4   whatever variation went to overtime. The total

5   net check attributed to Bien was $108.79. I

6   needed to get him to 126 so he netted what he

7   wanted to. You know, what he expected.

8   Q   Okay.

9   A   Which was 126 minus 108.79 is 17.21.

10   Within a penny or so.

11   Q   So the cash number is total net pay

12   minus net check?

13   A   Correct.

14   Q   Where does the net check number come

15   from?

16   A   I got it from a report from ADP, but I

17   could've just as easily waited for the check and

18   looked at the check.

19   Q   I see. I see.

20   A   Let me back up on that. I could not

21   have gotten it from looking at the report -- not

22   looking at the check. I would've gotten it from

23   a labor distribution report that ADP generates

24   after I send them the information.

25   Q   Is the net check number the net pay

Page 82

1   DAVID SAPERSTEIN

2   that's actually the amount of the check that

3   Persio got?

4   A   Not -- when an employee works at two

5   separate locations, for accounting reasons, not

6   for payroll reasons, but for accounting reasons,

7   you want to attribute the proper amount to the

8   proper location. So each location pays its fair

9   portion of the payroll.

10   Q   Of course.

11   A   So if you look at it, somewhere else

12   on here there's Persio, 108.79 plus 101.96 --

13   Q   This is at Sage, right?

14   A   Yes. Which is what he actually saw

15   and deposited into his account or whatever he

16   did with it.

17   Q   It would be the 108 plus the 101?

18   A   Yes.

19   Q   I see. And that's the number that you

20   got from ADP?

21   A   Correct.

22   Q   Why don't we take one where someone

23   worked at just one location.

24   A   Okay. Let's make it easy and say

25   Franklin Santana.

1   DAVID SAPERSTEIN

2   Q   Right. He's the last one at Blen?

3   A   Right.

4   Q   In order to arrive at the amount of

5   cash that he's supposed to get, that's the

6   purpose of this worksheet; is that right?

7   A   It's the main purpose of the

8   worksheet. The other purpose is also

9   accounting-wise it distributes where the funds

10   are supposed to be coming from.

11   Q   Okay. All right. In terms of getting

12   to the cash number for Franklin Santana, which

13   is $54 -- 55?

14   A   54.56.

15   Q   Right. How would you go about doing

16   that? And I'm sorry to belabor it, but I want

17   to make sure I understand.

18   A   Again, 315 divided by 60 would've

19   given me the net hourly rate.

20   Q   Again, that's 5.25, as it happens?

21   A   Okay. So now we've got the hourly

22   rate. Sixty hours times 5.25, that's 315.

23   That's how much he's got to get for working 55

24   hours plus one hour each shift for lunch, which

25   I'm guessing here is five shifts at 60 hours.

Page 84

1   DAVID SAPERSTEIN

2   Q   Sixty under hours looks to you like --

3   like it was probably 12 hours five times a week?

4   A   Yes.   That would've been confirmed by

5   those other reports we looked at earlier.

6   Q   The number of hours?

7   A   Number of shifts, because it says the

8   days.

9   Q   The number of shifts?

10   A   The other report would say for

11   Franklin Santana -- without looking at it, I

12   know what it's going to say.   It's going to say

13   five days, 60 hours.

14   Q   Okay.   Good.

15   A   So you take 260.44, which was his net

16   check.

17   Q   That's a number you got from ADP?

18   A   Yes.   Subtract 260.44 from 315, and

19   you get 54.56.   In this particular case, it got

20   rounded up to 55.

21   Q   I see that.   And where does the 315

22   come from?

23   A   Sixty times 5.25.

24   Q   And where does the 5.25 come from?

25   A   That was his net.

1   DAVID SAPERSTEIN

2   Q   Rate?

3   A   That's how I came up with the net

4   rate --

5   Q   Where did you get the 5.25 originally

6   from?

7   A   Originally from --

8   Q   Jose?

9   A   Yes.

10   Q   I see.

11   A   So in order for me to be able to

12   figure this out in an efficient manner, I had to

13   break it down hourly. Otherwise, I would have

14   to manually do these calculations every single

15   time. I did not want to do that. It would take

16   too long to do that.

17   Q   Right.

18   A   What he got paid for time worked was

19   5.15 an hour plus whatever applicable hours in

20   overtime were. It happened that dividing the

21   net worked out within a few cents every week.

22   So I didn't have to adjust anything. And the

23   additional five hours is basically lunch.

24   Q   So the 5.25, is that a number that you

25   used for each of the workers listed here?

1   DAVID SAPERSTEIN

2   A   I don't remember.

3   Q   We could figure it out?

4   A   We could figure it out. You'd have to

5   base it on -- I based it on whatever I was given

6   from Jose Tavares. Let me stress, he did not

7   personally give it to me. It was just given to

8   me, I don't remember how. Maybe his wife might

9   have given it to me.

10   Q   Was it in a list or verbally or

11 something else?

12   A   Some kind of scribbled list, which

13 wasn't easy to decipher. I do remember that.

14 Anyway, we took the nets based on whatever he

15 was paying them. So in other words, we wanted

16 it to be seamless.

17   Q   So the 5.25 number is a number that he

18 gave you or that you got --

19   A   No. The 5.25 number is a number I

20 figured out. If somebody worked -- if he told

21 me somebody worked 12 hours and they received X

22 amount of dollars net, I just divided their --

23 that number by 12 and figured out how much they

24 were getting net.

25   Q   Did you have a net number for 12

Page 87

1   DAVID SAPERSTEIN

2   hours?

3   A   No.

4   Q   So I'm not sure how you could do that

5   computation.

6   A   Whatever his net number was, I divided

7   it by five, and that's how much the net number

8   was for 12 hours.

9   Q   So the net number that you started

10 with was for the week?

11   A   A week, yes.

12   Q   Divided by five is going to give you

13 a -- in this case, a 12-hour number?

14   A   Correct.

15   Q   In another case, let's take Enrique

16 Lara under Castle. He's got 72 hours?

17   A   Okay. That 72 hours is inclusive of

18 his one hour per day.

19   Q   So you would be dividing something by

20 six in his case?

21   A   Assuming that that's the information

22 that I got from Jose's list. If Jose's list

23 said that this net is for six days, then that's

24 how I would have done it. If Jose's list said

25 this net was for or five days, then that's how I

1   DAVID SAPERSTEIN

2   would have done it.

3   Q   Well, 72 hours is probably six days,

4   isn't it?

5   A   Yes. In this particular case, I

6   happen to know it is, and we can confirm it if

7   we find the proper sheet.

8   Q   So looking at 72, we know we're going

9   to take some number and divide it by six; is

10   that right?

11   A   We probably took 390.24 and divided it

12   by 72.

13   Q   And the 390.24 was a number that was

14   provided by Jose Tavares?

15   A   Actually, it was probably 390, and I

16   probably rounded it to make things easier for

17   me.

18   Q   But the three-point number was

19   provided by Jose?

20   A   The 390 net number was always provided

21   by Jose. Not on this particular day. You

22   understand that, right?

23   Q   Right.

24   A   At some point, when we had taken over

25   the locations from him.

1   DAVID SAPERSTEIN

2   Q   Was that kind of a standing number for

3   each employee?

4   A   What the 390.24?

5   Q   Yes, the net number.

6   A   No.   The net number -- I mean, some

7   were the same, some were different.   It depended

8   on how many hours they worked.

9   Q   I mean, for each employee he gave you

10 that number once?

11   A   A net number.

12   Q   A number that you were supposed to use

13 from week to week?

14   A   Yes.

15   Q   That's what I meant.

16   Let's also look at Exhibit 15.

17 (Handing.)

18   And when you've had a chance to look

19 at it, my question is what type of record are we

20 looking at here?

21   A   It's a weekly payroll report for Bien,

22 Castle and Sage.

23   Q   That's the first page.   The first page

24 is that.   There are some other pages that have

25 Jesse and J&I, if you look towards the end.